

ACLU finds Clark County courts set excessive fines on felons

Unmanageable debt makes it difficult to build life after crime

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Clark County judges routinely impose fines and fees on felony defendants during sentencing that exceed both what's required by law and the state average, according to a recent study by the American Civil Liberties Union of Washington. When felons don't pay the debt, they may be arrested on a warrant, brought to court and face the option of either making a payment immediately or spending a few days in jail.

The practice often results in keeping felons in perpetual debt and hindering their rehabilitation and re-entry into the community, the study's authors found.

"Our criminal justice system should help people re-enter their communities, but excessive court-imposed debt is a formidable barrier," said Vanessa Hernandez, a staff attorney with ACLU Washington, in a statement. "Unfair practices keep individuals tethered to the criminal justice system for years, sometimes for life."

The study, released this month, also found that state law perpetuates felon debt by mandating a 12 percent interest rate on unpaid court fees, fines and restitution.

In the wake of previous studies with similar findings, Clark County began in August to take steps to address the problem, said Clark County Superior Court Judge Barbara Johnson.

"A lot of work has been going on, and we are continuing to address it," she said.

Meanwhile, a bill introduced in the state Legislature, but too late for consideration this session, seeks to reduce the interest rate on such debts.

Clark County was one of four counties from which the ACLU of Washington has received the most complaints from felons about receiving excessive fines and fees and being jailed for not making payments on their debt, Hernandez said. The others are Benton, Clallam and Thurston counties.

"I think it's frustrating to everyone involved, because anyone involved in the collection efforts knows that the older the accounts receivable is, the less likely is the ability to pay," said Johnson.

Clark County Chief Deputy Clerk Baine Wilson, who operates the county clerk's collection unit, said her office works with felons to manage their payments, but felons often don't respond to her office's repeated letters and phone calls. That's when their cases may be sent to a judge for a bench warrant.

A bench warrant "is sometimes the only way we can get in touch with them, because they failed to keep in touch with us," she said.

Fees, fines and restitution are imposed on felons at the time of sentencing. Unlike restitution, which is mandatory and amounts to the victim's monetary loss, many of the fees and fines imposed are up to an individual judge or court.

Superior Courts are authorized to impose more than 20 separate fees and fines, including the cost of serving a warrant, the cost of a court-appointed defense attorney, fees for requesting a jury trial and criminal filing fees. State law, however, requires only that judges impose two fees/fines: a \$500 victim penalty assessment and a \$100 DNA database fee, according to the ACLU.

Judges impose discretionary fines and fees without considering a defendant's ability to pay off the debt, nor is there a formula in state law designed for assessing that ability, the study's authors found. Felons also face greater challenges in obtaining employment. Up to 60 percent of former inmates remain unemployed one year after release from prison, according to a 2008 study by the State Minority and Justice Commission.

Annual collection fee

In Clark County, the median amount of fees and fines for a single felony case is \$2,072, compared with a median of \$1,110 statewide, Hernandez said.

Clark County also charges an indebted felon an annual \$100 collection fee. That, combined with the 12 percent interest rate, often builds up the debt to insurmountable levels, according to the ACLU. (The collection fee is restricted to \$100 per year no matter how many cases the defendant owes money on, Wilson said.)

Wilson said judges also frequently waive the interest on all fees and fines when defendants pay off the debt. State law requires that interest be paid on restitution debt.

"Particularly in Clark County, the situation is really bad ..." said Vancouver defense attorney Bob Yoseph. "You send this guy off to prison and charge him \$2,000, then restitution on top of that. All of a sudden, he's off the charts on how much he has to pay."

Yoseph said he's raised the issue with judges for years, but judges have continued to impose every fine and fee they can, including the cost of the defendant's court-appointed attorney. When defendants are read their Miranda rights when they're arrested, they're told that if they can't afford an attorney, one will be provided to them.

"Then they turn around and charge you for it," Yoseph said.

He said excessive fines and aggressive collection practices in Clark County started about 20 years ago.

When defense attorneys would ask that only mandatory fees and fines be imposed, past judges would sometimes respond: "'You might win the lottery someday,'" Yoseph said.

Although the court doesn't assess a defendant's ability to pay fines and fees at the time of sentencing, the collection unit does conduct a financial assessment to determine how much a defendant can afford to pay each month, Wilson said. Some defendants pay as little as \$1 per month, she said.

"We want defendants to be held accountable for paying restitution to victims, but we also have to balance that with their income level and ability to find employment," Wilson said.

Committee of review

Johnson assembled a committee in August to examine the way Clark County Superior Court imposes and collects such fees and fines, whether it conforms with the Constitution and whether it's cost-effective. The committee includes three Superior Court judges and representatives from the Prosecuting Attorney's Office, the Clerk's Office, county administration, the Sheriff's Office, the county Auditor's Office and the county Budget Office.

The committee has already produced a change in the court forms used during sentencing, Johnson said. This winter, judges began using forms that show which fines are mandatory and which are discretionary, as well as whether a defendant has a disability that may interfere with the ability to pay fees and fines, Johnson said.

“We weren’t doing all we could to find out if a defendant had a disability or had the ability to pay,” she said.

Meanwhile, the county is conducting an audit, prompted by the committee’s work, to determine the actual cost and cost-effectiveness of using warrants to bring felons with unpaid debt into custody and in front of a judge.

That warrant system involves resources, including employee time and pay, from Superior Court, the Clerk’s Office, the Sheriff’s Office and the county jail.

It’s unclear when the audit will be completed, Johnson said.

“It’s difficult to try to capture all of the costs,” she said.

Clark County Deputy Prosecutor Bernard Veljacic said he also plans to meet with ACLU representatives March 7 to hear their recommendations for other improvements.

Lawmakers have proposed statewide changes. A bill by state Rep. Mary Helen Roberts, D-Lynnwood, seeks to reduce the interest rate on unpaid fines and fees, require courts to consider a defendant’s income before imposing costs or fees, and allow courts to waive fines and fees. The bill was filed too late for consideration this session but will be considered next session, Hernandez said.

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